

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FILED

MAR 13 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

In re: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION, This appeal relates to the
cases listed in Exhibit A,

No. 04-35875

D.C. No. MD-01-01407-BJR

JAMES E. ANDERSON; et al.,

Plaintiffs - Appellants,

MEMORANDUM^{*}

(This memorandum applies to the
parties listed in Exhibit A)

v.

BAYER CORPORATION; et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Western District of Washington
Barbara Jacobs Rothstein, District Judge, Presiding

Argued and Submitted February 7, 2006
Seattle, Washington

Before: D.W. NELSON, RYMER, and FISHER, Circuit Judges.

James E. Anderson, et al. appeal from the district court's dismissal of their

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

action, arguing that removal jurisdiction is lacking. We agree, and reverse.

Bayer, whose burden it is to establish removal jurisdiction, *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838, *amended by* 387 F.3d 966 (9th Cir. 2004), did not show that the joint complaint obviously fails to state a cause of action under Mississippi law against resident defendants, *see McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (establishing standard for fraudulent joinder). No evidence was presented to pierce the pleadings, therefore we look only to the allegations in the complaint. Assuming (without needing to decide) that Mississippi requires knowledge on the part of retailers or pharmacists, paragraphs 70, 73 and 118 of the complaint sufficiently aver it for purposes of notice pleading. Miss. R. Civ. P. 8(a). We are not obliged to follow federal district court decisions upon which Bayer relies, but in any event do not read them as controlling here given the specific allegations in Anderson's complaints.

No basis appears in the record or in our case law for severing the claims of the eight plaintiffs who have named non-diverse defendants. Accordingly, we reverse and remand to the district court with instructions to vacate its dismissal orders and its order to file individualized complaints, as both were without jurisdiction, and to order the action, in the form it was at the time of removal, remanded to state court.

Given this disposition, it is unnecessary to reach Anderson's alternative

argument that the complaints should not have been dismissed for that issue is moot.

REVERSED AND REMANDED.